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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/416,808	10/13/1999	SAMUEL EDWARD MARMON	13768	6653

7590

06/05/2002

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EXAMINER

PRATT, CHRISTOPHER C

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/05/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

mail

Office Action Summary

Application No.

09/416,808

2/19
Applicant(s)

MARMON ET AL.

Examiner

Christopher C. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 12-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11 and 25, drawn to porous substrate, classified in class 442, subclass 59+.
- II. Claims 12-24, drawn to a coating process, classified in class 427, subclass various.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by another method comprising applying a vacuum to the second surface to draw the coating material into the fabric.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Steven Flack on 5/23/02 a provisional election was made with traverse to prosecute the invention of group I, claims 1-11 and 25. Affirmation of this election must be made by applicant in replying to this Office

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action. Claims 12-23 and 24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement

6. The IDS' of paper numbers 3-4 are not present in the file. Please resubmit them for consideration.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3, 6-11, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everhart et al (5858503).

Everhart is concerned with the creation of porous substrate comprising thermoplastic fibers having a denier of less than about 10 (col. 3, lines 63-68). Said substrate comprising a topically applied active agent located on the surface of said

fibers and differentially distributed throughout the thickness of said fabric in a gradient (col. 7, lines 60-67). Everhart does not seem to teach the ratio of said gradient; however, Everhart teaches that the gradient ratio can be modified by various application processes (col. 11, lines 57-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize applicant's claimed ratio, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105, USPQ 233. The skilled artisan would have been motivated to alter said ratio by the desire to optimize the filtration properties of said substrate. Similarly, it would have been obvious to draw [/] more coating into the interior of the substrate as compared to the relative amount left on the outer surfaces. Such a modification would have been motivated by the desire to render said coating more durable.

Everhart does not seem to teach the thickness of said porous substrate. It would have been obvious to utilize a substrate having a thickness of at least about 100 mils. Such a modification would have been motivated by the desire to render said substrate suitable for a variety of larger filtration applications.

Everhart does not seem to teach the density of said substrate. It would have been obvious to a person having ordinary skill in the art to utilize a density within applicant's claimed range. Such a modification would have been motivated by the desire to optimize said substrates ability to filter different sized particles.

Everhart teaches the use of a wetting agent (col. 12-13, lines 60-25).

With respect to claims 8-11, Everhart teaches applying said coating in different regions and patterns (col. 11, lines 25-35). It would have been an obvious matter of design choice to select these regions at the edge of said substrate. Such a modification would have been motivated by the desire to render said substrate more attractive to consumers.

9. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everhart et al (5858503) in view of Phillips et al (5972505 or 5733490).

Everhart teaches the use of both spunbond and carded polyolefin webs, but does not seem to teach the use of crimped fibers (col. 7, lines 3-15).

Phillips is concerned with the creation of coated porous substrate used as a filter. Phillips teaches the use of crimped thermoplastic staple fibers. It would have been obvious to a person having ordinary skill in the art to utilize crimped fibers in the filter of Everhart. Such a combination would have been motivated by the desire to increase the apparent volume of the filter substrate.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the


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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Christopher C. Pratt
June 3, 2002



CHERYL A. JUSKA
PRIMARY EXAMINER